

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Pricing, based upon Total Element Long-Run Incremental Costs, for Unbundled Network Elements and Combinations of Unbundled Network Elements, and the Appropriate Avoided Cost Discount for Verizon New England, Inc. d/b/a Verizon Massachusetts' Resale Services in the Commonwealth of Massachusetts

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D.T.E. 01-20

**SURREPLY OF AT&T REGARDING ITS  
MOTION FOR RECONSIDERATION AND CONDITIONAL MOTION TO  
STRIKE VERIZON'S RECURRING COST MODEL**

AT&T Communications of New England, Inc. (AT&T) submits this surreply to Verizon's September 20, 2001 Reply to AT&T's Motion for Reconsideration and Conditional Motion to Strike Verizon's Recurring Cost Model ("Verizon Reply"). Verizon's Reply fails to address, and in some instances, reinforces the fundamental arguments in AT&T's Motion for Reconsideration and Conditional Motion to Strike filed on September 7, 2001. Verizon concedes that the evidentiary standard upon which the Department based its August 31 Order has not been applied in past rate setting proceedings. *See* Verizon Reply at 10. Furthermore, Verizon effectively concedes that it will be unable to meet the requirements of this new evidentiary standard, but argues instead that this new standard should not be applied to it. *See* Verizon Reply at 12, 14. In short, Verizon's reply fails to respond to the thrust of AT&T's argument that the evidentiary standard adopted by the Department as the basis for its discovery ruling is inconsistent with past practice, burdensome to all parties, and has not been applied evenhandedly to both AT&T and Verizon. Given these circumstances, the Department's Order of August 31, 2001 should be reconsidered and the discussion of a new evidentiary standard

omitted from that Order. In addition, Verizon's appeal with respect to information request VZ-ATT-1-23 should be denied.

## **ARGUMENT.**

### **I. RECONSIDERATION OF THE AUGUST 31, 2001 INTERLOCUTORY ORDER IS NECESSARY IN THIS CASE.**

#### **A. AT&T Addresses New Issues That Were Not and could Not Have Been Previously Addressed. AT&T Has Not Engaged in "Reargument" of Positions Established Prior to the Department's Order.**

AT&T's Motion for Reconsideration addresses new issues that have arisen expressly because of the Department's use of a new evidentiary standard as the basis its August 31 Order. AT&T's Motion for Reconsideration is not reargument, as Verizon asserts. The thrust of AT&T's Motion for Reconsideration focused on the ramifications of this new evidentiary standard. These arguments could not have been made earlier and a motion for reconsideration is an appropriate way to raise these new issues. Moreover, as has been established in past proceedings, reconsideration is appropriate where a Department order has unintended implications. *See Consolidated Arbitrations*, Phase 4-A, at 5 (February 5, 1997). As demonstrated below, the unreasonably burdensome effect of the evidentiary standard underlying the August 31 Order makes reconsideration appropriate and necessary in this case.

#### **B. The Department's Evidentiary Standard is New and Will Have Burdensome Ramifications.**

AT&T seeks reconsideration because the Department has established a requirement that all evidence supporting the complex cost models at issue, even minimally relevant supporting data, be "spread upon the record." *See* August 31 Order. As Verizon concedes in its reply brief, this is an evidentiary standard that has not been applied in past rate setting proceedings. *See* Verizon Reply at 9. Given the considerable complexity of the cost models at issue in this proceeding, a requirement that all supporting data be produced in hard copy so it may be entered

into evidence will place an extreme burden upon the parties and the Department without any corresponding benefit to the decision-making process.

As Verizon concedes in its reply, it will not be able to comply with this evidentiary standard itself. *See* Verizon Reply at 11-12. Verizon continues to refuse to provide access to a large amount of the data underlying its loop and digital switching cost models on the basis that it would impose “excessive and unnecessary burdens” upon the company. Verizon Reply at 12. Verizon contends that the data requested by AT&T is “tertiary” information with “remote” relevance to this proceeding. *See id.* Under the Department’s new evidentiary standard, however, this data must be produced. Verizon is affirmatively using the new standard to seek to strike the HAI 5.2a-Ma Model and all associated prefiled testimony. Verizon Reply at 7. Yet, Verizon argues that it would be subject to an “excessive and unnecessary burden” if it had to produce the supporting data concerning its own cost model. Verizon Reply at 12. Verizon cannot have it both ways.

Verizon’s arguments not only promote an inappropriate double standard, they also evidence the patently unworkable nature of the new evidentiary standard. Parties will be required to produce voluminous data that has minimal relevance to the case and introduce all such material into the record of the case. Parties will frequently be incapable of complying with the Department’s new standard, as evidenced by Verizon’s continued inability to provide data underlying its cost model. The new standard will also create intellectual property difficulties as cost models become more complex and rely upon licensed third party data. Given these circumstances, reconsideration is most appropriate.

**C. AT&T has Made Appropriate Efforts to Provide Verizon With Reasonable Access to the Geocoded Data Set at Issue.**

The geocoding data that Verizon has sought throughout these proceedings is tertiary data that is not a direct input to the HAI model. As such, it is just like the supporting data as to which Verizon is continuing to fight production. The geocoding data sought by Verizon consists of a listing of millions of customer locations by longitude and latitude with no independent significance. This data is made meaningful only once it is summarized and put through the clustering process, the results of which have already been filed electronically with the Department and served on all parties to this proceeding.

Verizon has insisted that it would like to subject the raw geocoding to a computer analysis “with appropriate software.” In order to facilitate this request, AT&T has repeatedly offered to make the geocoded data set available remotely through the computer system of its third party vendor, TNS. Verizon, however, has never articulated any reason why such access is not sufficient to meet its needs. Rather than accepting AT&T’s reasonable offer, Verizon has insisted on AT&T’s production of all the raw data. The Department, by requiring that all such data be spread upon the record, has adopted an unworkable new discovery and evidentiary standard which should be reconsidered.<sup>1</sup>

**CONCLUSION.**

For the reasons stated above, and in its Motion for Reconsideration and Conditional Motion to Strike, AT&T respectfully requests that the Department reconsider its August 31, 2001 Order by omitting the references to an evidentiary standard requiring that all supporting data be spread on the record and denying Verizon’s appeal with respect to information request

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<sup>1</sup> AT&T notes that Verizon does not oppose AT&T’s request for additional time to comply with the remaining discovery requests that were the subject of the August 31 Order. AT&T has now produced responses to all but 1 of  
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VZ-ATT-1-23. If the Department declines to reexamine its order, however, Verizon's recurring cost model should be stricken as it clearly relies on data that has not been produced and cannot be spread upon the record of this proceeding.

**AT&T COMMUNICATIONS OF NEW  
ENGLAND INC.**

Respectfully submitted,

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(continued...)

those requests. That response has been delayed because the personnel responsible for producing the information did not have access to the office following the World Trade Center disaster.